Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Message Text

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NEA-10 NSAE-00 USIA-15 OPIC-06 SP-02 TRSE-00 CIEP-02
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E.O. 11652:N/A

TAGS: TECH, ENRG, OECD

SUBJECT:IEA IMPLEMENTING AGREEMENT ON HYDROGEN PRODUCTION

1. PLEASE PASS FOLLOWING U.S. COMMENT ON SUBJECT AGREEMENT TO KLEIN, IEA SECRETARIAT.

2. U.S. WOULD PREFER THAT INTELLECTUAL PROPERTY PROVISIONS BE SPECIFIED IN EACH ANNEX. ACCORDINGLY, IT IS REQUESTED THAT THE FOLLOWING PARAGRAPH BE SUBSTITUTED FOR ARTICLE 7 OF THE AGREEMENT:

QUOTE IT IS EXPECTED THAT EACH TASK AGREED TO PURSUANT TO
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THIS AGREEMENT WILL, IN ITS PARTICULAR ANNEX, SPECIFY THE PROVISIONS ON INFORMATION AND INTELLECTUAL PROPERTY TO BE APPLICABLE THERETO. THE GENERAL GUIDELINES CONCERNING INFORMATION AND INTELLECTUAL PROPERTY, APPROVED BY THE IEA GOVERNING BOARD ON JANUARY 30, 1976, SHALL BE TAKEN INTO ACCOUNT IN DEVELOPING THE PROVISIONS FOR EACH SUCH ANNEX.
END QUOTE

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3. U.S. SUGGESTED TEST FOR ANNEX I, SENT VIA COMMERCIAL CABLE ON 12/14, SHOULD BE AMENDED TO INCLUDE THE FOLLOWING NEW PARAGRAPH 8 ON INFORMATION AND INTELLECTUAL PROPERTY, WHICH, WITH MINOR EDITING CHANGES, IS IDENTICAL TO THE ANNEX PROVISIONS OF THE DRAFT IMPLEMENTING AGREEMENT ON HEAT TRANSFER AND HEAD EXCHANGERS:

"8. INFORMATION AND INTELLECTUAL PROPERTY.

A. THE PUBLICATION, DISTRIBUTION, HANDLING, PROTECTION AND OWNERSHIP OF INFORMATION AND INTELLECTUAL PROPERTY ARISING FROM THIS ANNEX TO THE IEA IMPLEMENTING AGREEMENT ON THE PRODUCTION OF HYDROGEN FROM WATER (HEREINAFTER CALLED ANNEX I) SHALL BE DETERMINED BY THE ANNEX I PARTICIPANTS, ACTING IN UNANIMITY, IN CONFORMITY WITH THIS AGREEMENT.

B. SUBJECT ONLY TO RESTRICTIONS APPLYING TO PATENTS AND COPYRIGHTS, THE ANNEX I PARTICIPANTS SHALL HAVE THE RIGHT TO PUBLISH ALL INFORMATION PROVIDED TO OR ARISING FROM ANNEX I EXCEPT PROPRIETARY INFORMATION. FOR THE PURPOSES OF THIS PARAGRAPH, PROPRIETARY INFORMATION SHALL MEAN INFORMATION OF A CONFIDENTIAL NATURE SUCH AS TRADE SECRETS AND KNOW-HOW (FOR EXAMPLE, COMPUTER PROGRAMS, DESIGN PROCEDURES AND TECHNIQUES, CHEMICAL COMPOSITION OF MATERIALS, OR MANUFACTURING METHODS, PROCESSES, OR TREATMENTS) WHICH IS APPROPRIATELY MARKED, PROVIDED SUCH INFORMATION:
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(1) IS NOT GENERALLY KNOWN OR PUBLICLY AVAILABLE FROM OTHER SOURCES;

(2) HAS NOT PREVIOUSLY BEEN MADE AVAILABLE BY THE OWNER TO OTHERS WITHOUT OBLIGATION CONCERNING ITS CONFIDENTIALITY; OR

(3) IS NOT ALREADY IN THE POSSESSION OF THE RECIPIENT ANNEX I PARTICIPANT WITHOUT OBLIGATION CONCERNING ITS CONFIDENTIALITY.

THE ANNEX I PARTICIPANTS SHALL TAKE ALL NECESSARY MEASURES IN ACCORDANCE WITH THIS PARAGRAPH, THE LAWS OF THEIR RESPECTIVE COUNTRIES, AND INTERNATIONAL LAW TO PROTECT PROPRIETARY INFORMATION.

C. THE OPERATING AGENT SHOULD INVITE THE CONTRACTING

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PARTIES TO MAKE AVAILABLE OR TO IDENTIFY, IN THE CONTEXT OF THE TASK PRE-EXISTING INFORMATION, AND INFORMATION DEVELOPED INDEPENDENTLY OF THE TASK, KNOWN TO THEM WHICH IS RELEVANT TO THE TASK AND WHICH CAN BE MADE AVAILABLE WITHOUT CONTRACTUAL OR LEGAL LIMITATIONS.

D. THE OPERATING AGENT SHALL PROVIDE REPORTS OF ALL WORK PERFORMED UNDER THIS TASK AND THE RESULTS THEREOF (ARISING INFORMATION), OTHER THAN PROPRIETARY INFORMATION TO THE EXECUTIVE COMMITTEE. REPORTS CONTAINING ARISING INFORMATION AND PRE-EXISTING INFORMATION NECESSARY FOR AND USED IN THE TASK, INCLUDING PROPRIETARY INFORMATION, SHALL BE PROVIDED TO EACH ANNEX I PARTICIPANT BY THE OPERATING AGENT. IT SHALL BE THE RESPONSIBILITY OF THE OPERATING AGENT TO IDENTIFY INFORMATION WHICH QUALIFIES AS PROPRIETARY INFORMATION UNDER THIS PARAGRAPH AND ENSURE THAT IT IS APPROPRIATELY MARKED.
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E. EACH ANNEX I PARTICIPANT AGREES TO LICENSE ALL PRE-EXISTING PROPRIETARY INFORMATION NECESSARY FOR AND USED IN THE TASK WHICH IT OWNS OR CONTROLS AND ALL ARISING PROPRIETARY INFORMATION TO THE OTHER ANNEX I PARTICIPANTS THEIR GOVERNMENTS, AND THE NATIONALS OF THEIR RESPECTIVE COUNTRIES DESIGNATED BY THEM:

(1) ROYALTY-FREE FOR USE IN THEIR COUNTRY ONLY; AND

(2) ON REASONABLE TERMS AND CONDITIONS FOR USE IN ALL OTHER COUNTRIES.

THE ANNEX I PARTICIPANTS AGREE TO LICENSE ALL ARISING PROPRIETARY INFORMATION TO ALL AGENCY PARTICIPATING COUNTRIES ON REASONABLE TERMS AND CONDITIONS FOR USE IN THEIR OWN COUNTRY IN ORDER TO MEET THEIR ENERGY NEEDS.

F. PATENTS SOLELY OWNED OR CONTROLLED BY ANNEX I PARTICIPANTS WHICH ARE NEEDED FOR USE IN THE TASK SHALL BE LICENSED TO ANY OTHER ANNEX I PARTICIPANT FOR USE IN ITS UNDERTAKINGS IN ANNEX I ONLY AT NO COST TO THE OTHER PARTICIPANT. IF SUCH PATENTS ARE PARTIALLY OWNED OR CONTROLLED BY AN ANNEX I PARTICIPANT THEN EFFORTS SHALL BE MADE BY THE CONTRACTING PARTY TO REDUCE OR ELIMINATE AS POSSIBLE THE BENEFIT THAT MIGHT ACCRUE TO IT.

G. INVENTIONS MADE OR CONCEIVED IN THE COURSE OF OR

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UNDER THIS TASK (ARISING INVENTIONS) SHALL BE OWNED IN
ALL COUNTRIES BY THE INVENTING PARTICIPANT. INFORMATION
REGARDING INVENTIONS ON WHICH PATENT PROTECTION IS TO
BE OBTAINED BY A PARTICIPANT SHALL NOT BE PUBLISHED OR
PUBLICLY DISCLOSED BY THE CONTRACTING PARTIES UNTIL
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A PATENT APPLICATION HAS BEEN FILED, PROVIDED, HOWEVER,
THAT THIS RESTRICTION ON PUBLICATION OR DISCLOSURE SHALL
NOT EXTEND BEYOND SIX MONTHS FROM THE DATE OF RECEIPT
OF SUCH INFORMATION. IT SHALL BE THE RESPONSIBILITY
OF THE OPERATING AGENT TO APPROPRIATELY MARK REPORTS
WHICH DISCLOSE INVENTIONS THAT HAVE NOT BEEN APPROPRIATE-
LY PROTECTED BY THE FILING OF A PATENT APPLICATION.

H. EACH ANNEX I PARTICIPANT AGREES TO LICENSE ALL PRE-
EXISING INVENTIONS COVERED BY PATENTS OWNED OR CONTROLLED
BY IT WHICH ARE NECESSARY FOR PRACTICING THE RESULTS OF
THE UNDERTAKINGS IN ANNEX I AND WHICH HAVE BEEN
UTILIZED IN THE TASK, AND ALL ARISING INVENTIONS, TO
THE ANNEX I PARTICIPANTS, THEIR GOVERNMENTS AND THE
NATIONALS OF THEIR RESPECTIVE COUNTRIES DESIGNATED
BY THEM:

(1) ROYALTY FREE FOR USE IN THEIR COUNTRY ONLY; AND

(2) ON REASONABLE TERMS AND CONDITIONS FOR USE IN ALL
OTHER COUNTRIES.

EACH ANNEX I PARTICIPANT AGREES TO LICENSE ALL ARISING
INVENTIONS TO ALL AGENCY PARTICIPATING COUNTRIES ON
REASONABLE TERMS AND CONDITIONS FOR USE IN THEIR OWN
COUNTRY IN ORDER TO MEET THEIR ENERGY NEEDS.

I. EACH ANNEX I PARTICIPANT MAY TAKE APPROPRIATE
MEASURES NECESSARY TO PROTECT COPYRIGHTABLE MATERIAL
GENERATED UNDER THE TASK. COPYRIGHTS OBTAINED SHALL
BE THE PROPERTY OF THAT ANNEX I PARTICIPANT PROVIDED,
HOWEVER, THAT OTHER ANNEX I PARTICIPANTS MAY REPRODUCE
AND DISTRIBUTE SUCH MATERIAL, BUT SHALL NOT PUBLISH IT
WITH A VIEW TO PROFIT.

J. EACH ANNEX I PARTICIPANT WILL, WITHOUT PREJUDICE TO
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ANY RIGHTS OF INVENTORS OF AUTHORS UNDER ITS NATIONAL

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LAWS, TAKE ALL NECESSARY STEPS TO PROVIDE THE COOPERATION FROM ITS AUTHORS AND INVENTORS REQUIRED TO CARRY OUR THE PROVISIONS OF THIS PARAGRAPH. EACH ANNEX I PARTICIPANT WILL ASSUME THE RESPONSIBILITY TO PAY AWARDS OR COMPENSATION REQUIRED TO BE PAID TO ITS EMPLOYEES ACCORDING TO THE LAWS OF ITS COUNTRY.

K. THE ANNEX I PARTICIPANTS MAY ESTABLISH GUIDELINES TO DETERMINE WHAT CONSITUTUES A "NATIONAL" OF A PARTICIPANT. DISPUTES THAT CANNOT BE SETTLED BY THE ANNEX I PARTICIPANTS SHALL BE SETTLED UNDER ARTICLE 9(D) OF THE IMPLEMENTING AGREEMENT."

4. FOR THE PURPOSES CONTEMPLATED IN ANNEX II, AT LEAST DURING THE INITIAL YEAR'S ACTIVITIES, THE U.S. HAS NO OBJECTIONS TO THE ANNEX AS WRITTEN, EXCEPT TO REQUEST A MINOR ADDITION. BY THE END OF THE FIRST YEAR IT SHOULD BE POSSIBLE TO AMEND THIS ANNEX TO BETTER DEFINE THE WORK TO BE PERFORMED AND THE PARTICIPATION COMMITMENTS OF THE SIGNATORIES. WE REQUEST THAT THE FOLLOWING BE ADDED AS PARAGRAPH 8 OF THE ANNEX:

"8. INFORMATION AND INTELLECTUAL PROPERTY.

THE PUBLICATION, DISTRIBUTION, HANDLING, PROTECTION, AND OWNERSHIP OF INFORMATION AND INTELLECTUAL PROPERTY ARISING FROM ACTIVITIES CONDUCTED UNDER THIS ANNEX SHALL BE DETERMINED BY THE ANNEXII PARTIC-

IPANTS, ACTTNG

UNANIMITY, IN CONFORMITY WITH THIS AGREEMENT.
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